

**NATIONAL DEFENSE
APPROPRIATIONS ACT
FOR FISCAL YEAR 2002**



Prepared by

**Business Operations Law Division
Office of the Command Counsel
HQ, U.S. Army Materiel Command**

Introduction

	Page
Table of Contents	2
Introduction	3
1. Lobbying and Propaganda	3
2. Competitive Sourcing	3, 4
3. Depots, Arsenals & Ammunition Plants	4, 5
4. Environmental/Real Estate Issues	5, 6
5. Emergency Preparedness	6, 7
6. Foreign Military Sales	7
7. Military Pay & Benefits	8
8. Financial Management Information Technology System	8
9. Projects Honoring Victims of Terrorist Attacks	8

Introduction

The HQ AMC Office of the Command Counsel has prepared a Synopsis of the most important provisions of the National Defense Appropriations Act for Fiscal Year 2002, P.L. 107-117. These synopsized provisions are considered to be the most significant and of the greatest interest to our clients. The synopsis for each legislative provision highlights the provision, and, where appropriate, any related other statutory and/or regulatory references that are affected by this provision. The synopsis is not intended to be a detailed analysis of the subject since to do so would create a voluminous product. The subject matter expert noted at the end of the synopsis can be contacted for additional advice and assistance by HQAMC personnel while other personnel should contact their supporting legal office.

Executive Summary

1. Lobbying and Propaganda.

- a. **Restrictions Publicity and Propaganda (Sec 8001).** Reenacts this recurring provision, which prohibits the use of any appropriation for publicity or propaganda purposes not authorized by Congress. (Diane Travers, 617-7571).
- b. **Restrictions on Lobbying (Sec. 8012).** This recurring annual provision prohibits the use of appropriations to influence congressional action on any legislation or appropriation. (Diane Travers, 617-7571).

2 Competitive Sourcing.

- a. **Requirement to Conduct Most Efficient Organization Analysis (Sec. 8014).** Reenacts annual provision requiring certification to Congress of a most efficient and cost effective organization analysis prior to converting a function being performed by more than 10 DOD civilians to contractor performance, with limited exception. These exceptions include: (1) contracts for functions included on the procurement list established pursuant to the Javits-Wagner-O'Day Act; (2) functions planned to be converted to performance by a qualified non-profit agency for the blind or severely handicapped in accordance with the Javits-Wagner-O'Day Act; or (3) functions planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian Tribe or Native Hawaiian organization. (Diane Travers, 617-7571).

b. **Time Limits on A-76 Studies (Sec. 8024).** Reenacts annual provision that prohibits the use of appropriated funds to perform any OMB Circular A-76 cost study exceeding a period of 24 months for a single function study or 48 months for a multifunction study. (Diane Travers, 617-7571).

c. **Public-Private Depot Maintenance Competitions (Sec. 8035).** Permits DOD to acquire depot level maintenance or repair of aircraft, vehicles, and vessels, as well as the production of components and other Defense-related articles, through non-A-76 public-private competitions. The Senior Acquisition Executive or designee must certify that successful public and private bids contain comparable estimates of direct and indirect costs. (Diane Travers, 617-7571).

3. **Depots, Arsenals & Ammunition Plants**

a. **Operations and Maintenance, Army (Title II).** \$22,335,074,000 appropriated, of which up to \$10,794,000 can be used for emergencies or extraordinary expenses, and not less than \$355,000,000 is available only for conventional ammunition care and maintenance. (Dave Harrington, 617-7570).

b. **Research, Development, Test and Evaluation, Army (Title IV).** \$7,106,074,000 available until 30 September 2003. (Dave Harrington, 617-7570).

c. **Defense Working Capital Funds (Title V).** Appropriates \$1,312,986,000. (Dave Harrington, 617-7570).

d. **Chemical Agents and Munitions Destruction (Title VI).** Appropriates \$1,105,557,000 for stockpile and non-stockpile chemical material destruction, consisting of \$739,020,000 for OMA, \$164,158,000 for Procurement and \$202,379,000 for RDT&E. (Dave Harrington, 617-7570).

e. **Prohibition of Small Arms Demilitarization (Sec. 8020).** No funds available to DoD may be used to demil or dispose of M-1, M-14, .22 caliber, .30 caliber rifles, or M-1911 .45 pistols. (Dave Harrington, 617-7570)

f. **Credit on Small Business Subcontracting Plans for purchases from Qualified Non-Profit Agency for the Blind or Severely Handicapped (Sec.8028).** For negotiated and sealed bid purchases over \$500,000, contractors must have a subcontracting plan for use of firms controlled by veterans, disabled veterans, women, socially and economically disadvantaged persons and qualified non-profit agencies for the blind or severely handicapped to be counted toward fulfilling plan goals. (Dave

Harrington, 617-7570).

g. **Use of Funds for Drug Interdiction and Counter-Drug Activities Performed by National Guard (Sec. 8057).** Allows use of funds appropriated by the Act for compensation of NG members who perform duties pursuant to a state plan for drug interdiction and counter-drug activities approved by the Secretary of Defense. (Dave Harrington, 617-7570).

h. **Purchase of Ultralight Camouflage Net Systems (Sec. 8148).** Authorizes use of OMA funds to purchase ultralight camouflage net systems as unit spares in order to modernize the current inventory, provided the Secretary of the Army first certifies to Defense Committees that the UCNS is technically superior, less costly and provides improved force protection compared to the current system. (Dave Harrington, 617-7570).

i. **Army Acquisition Management (Sec. 8149).** Reduces Army OMA Account by \$5,000,000 to reflect efficiencies in acquisition management and requires a report to Defense Committees by 15 April 2002 on final plans for realigning requirements generations, acquisition, resource management and departmental headquarters function and systems. Independent analysis of CAN report and budget and personnel savings by function for FYs through 08 are also required (DaveHarrington,617-7570).

j. **Non-Profit Army Venture Capital Corporation (Sec. 8150).** Makes available \$25,000,000 of Army RDTE funds, derived from pro rata reduction from research projects other than Congressional Special Interest and Future Combat System, to be available for funding the venture capital investment corporation established pursuant to 10 U.S.C. §2371. The idea of corporation is to take an ownership stake in companies with promising military technologies. Although the fund is supposed to eventually become self-sustaining, it is initially funded by this “tax” on the RDTE appropriation.

(Dave Harrington, 617-7570)

4. **Environmental/Real Estate Issues**

a. **Environmental Restoration, Army T(Title V).** Appropriates \$389,800,000 that may be transferred to other appropriates and merged into them when required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings or other purposes, and if the funds are determined unnecessary, they may be transferred back to the original appropriation. (Dave Harrington, 617-7570)

b. **Relocations within the National Capital Region Authorization Act (Sec. 8021).** This provision states that no more than \$500,000 of the FY 02 funds shall be

used during a single fiscal year for “any single relocation of an organization, activity or function of the DoD into or within the National Capital Region. However, the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing that such a relocation is required in the best interest of the Government. (Stan Citron, 617-8043)

c. **Prohibition Against Transportation of Chemical Munitions/Agent to Johnston Atoll Authorization Act (Sec. 8075).** This provision states that no FY 02 funds may be used to transport chemical munitions or agents to Johnston Atoll for storage or demilitarization. The provision has an exception for “World War II chemical munitions or agent of the U.S. found in the “World War II Pacific Theater of Operations”. (Stan Citron, 617-8043)

d. **Iowa Army Ammunitions Plant (Iowa AAP) Worker Health Study Authorization Act (Sec. 8172).** The Secretary of Defense is required to take appropriate action to determine the nature and extent of exposure of current and former employees, including contractor and subcontractor employees, to radioactive or other hazardous substances at Iowa AAP. The provision also requires notifying employees of known or possible exposure to radioactive or other hazardous substances at Iowa AAP. The provision also requires notifying employees of known or possible exposure to radioactive or other hazardous substances at Iowa AAP and, if necessary, providing appropriate guidance on contracting health care providers. The deadline for completing these actions is 90 days after enactment of the Act. (Stan Citron, 617-8043)

5. **Emergency Preparedness**

a. **Defense Emergency Relief Funds (DERF) (Sec. 301).** DERF funds are available for the purposes set forth in the 2001 Emergency Supplemental Appropriation Act (PL 107-38) provided the funds are used to reimburse other appropriations or funds of the DoD for costs incurred for such purposes on or after 9/11; Provided further that the Sec.Def. may transfer to the fund amounts from any current appropriation made available in defense appropriation acts only for the purpose of adjusting and liquidating obligations properly chargeable to the fund if the SecDef determines amounts in the fund are insufficient to liquidate obligations made using appropriations in the fund. All DERF funds transferred shall be merged with and shall be available for the same purposes and for the same time period as the appropriation to which transferred. (Nick Brognano, 617-8050)

b. **Defense Emergency Relief Funds (DERF) for Military Construction.** Authorizes the Secretary of Defense to use funds from the DERF to carry out military construction projects in response to or protection from acts or threatened acts of

terrorism (requires congressional notification). (Nick Brognano, 617, 8050).

c. **Investment Item Limitation. (Sec. 8043)** The \$100,000 limitation of OMA funds for an Investment Item does not apply to amounts appropriated in this Act under the heading “operation and maintenance, Defense-Wide” for expenses related to certain classified activities. (Nick Brognano, 617-8050)

d. **DOD Working Capital Funds. (Sec. 8044)** No funds can be used to buy an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale with certain exceptions. (Nick Brognano, 617-8050)

e. **Unsolicited Proposals Sec. 8051**. Before any funds can be appropriated for sole source studies, analysis or consulting services, the HCA must determine that: (1) a supporting technical evaluation has been done, (2) the unsolicited proposal offers significant technical promise, is of original thinking and was submitted in confidence, (3) it takes advantage of a unique and significant industrial accomplishment. This provision does not apply to contracts less than \$25,000 or relates to improvements of equipment in production or development. (Nick Brognano, 617-8050)

f. **Other Agency Support (Sec. 8105)**. No DOD funds shall be used to provide support to another department or agency if that department or agency is more than 90 days in arrears to DOD for goods and services previously rendered to it by DoD on a reimbursable basis. (Nick Brognano, 617-8050)

6. **Foreign Military Sales.**

a. **NATO Account, (Sec. 8019)**. The Secretary of Defense may negotiate with a foreign country to establish a separate account into which residual value amounts regarding the return of US military installations may be deposited in local currency. Those credits may be used for construction of facilities (as approved by Congress) to support US forces in the foreign country or for certain real estate maintenance or operating costs. (Craig Hodge, 617-8940)

b. **Violation of Trade Agreements, (Sec. 8036)**. For countries that violate trade agreements, the Secretary of Defense shall rescind any blanket waiver of the Buy American Act. (Craig Hodge, 617-8940)

c. **Transfer of Defense Articles Limited, 8072**. No funds may be spent transferring supplies or services (except intelligence services) to foreign countries or international organizations involved in international peacekeeping, peace-enforcement, or humanitarian assistance, without 15-day notice to Congress. (Craig Hodge, 617-8940)

d. **Waiver of Procurement Limitations (Sec. 8089).** The Secretary of Defense may waive certain legal limitations of procurement from foreign sources, if the application of the limitation would invalidate DOD/foreign country cooperative programs, or invalidate reciprocal trade agreements under 10 USC 2531. This assumes the country does not discriminate against the same items produced in the US. (Craig Hodge, 617-8940)

7. Military Pay & Benefits

a. **Military Housing Maintenance and Repair Limitations (Sec. 8099).** Prohibits using any funds other than those specifically appropriated for family housing accounts for repairs or maintenance to military family housing units – even where the units are used to conduct DOD business (i.e., for Flag and General Officer quarters). Additionally requires the DODIG to report on compliance with the funding rules for maintenance and repairs of Flag and General Officer quarters. (MAJ Beauchamp, 617-9022).

b. **Limitations on Support for Non-appropriated Fund Activities that Procure Alcohol for Resale with Non-appropriated Funds (Sec. 8108).** In order to be eligible for support, the NAF Activity must procure beer and wine in the State or States where the installation is located. Except in non-contiguous States (Alaska and Hawaii), hard liquor need not be procured in state, but must be procured from the most competitive source, price and other factors considered. (Dave Harrington, 617-7570).

8. **Financial Management Information Technology System (Sec. 8104)** Prohibits appropriated funds from being used for a mission critical or mission essential Financial Management Information Technology System that is not registered with the DoD Chief Information Officer. Prohibits such a system from receiving a milestone I, II, or III approved until the Under Secretary of Defense (Comptroller) certifies that the system is being developed in accordance with DoD's Financial Management Modernization Plan. (Nick Brognano, 617-8050).

9. **Project Honoring Victims of Terrorist Attacks.** Unity in the Spirit of America Act (USA Act) – Directs the Points of Light Foundation (funded under this act) to establish the number of victims killed as a result of the terrorist attacks of 11 September 2001; and complete a list that specifies the names of each victim and their state of residence. Authorizes the foundation to identify community based national based national and service projects and to name such projects in honor of such victims. Requires the foundation to establish and maintain websites and databases describing and recognizing such projects. (Nick Brognano, 617-8050)